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POSTED ON WEBSITE
NOT FOR PUBLICATIONUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

MODESTO DIVISION

In re) Case No. 10-91936-E-7
)
WALTER RALPH PINEDA,)
)
Debtor.)

)
WALTER RALPH PINEDA,) Adv. Pro. No. 10-9060
) Docket Control No. WRP-007
Plaintiff,)
v.)
BANK OF AMERICA, N.A., et)
al.,)
Defendants.)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION
[Motion to Reopen Pursuant to Local Rule 5010-1(a)]

Walter R. Pineda, the plaintiff, filed an ex parte motion to reopen an unidentified proceeding in this adversary action. The motion and supporting pleadings were served on counsel for the Defendant, but the matter was not set for hearing pursuant to Local Bankruptcy Rule 9014-1.

In the ex parte motion, the Plaintiff-Debtor alleges that

1 newly discovered evidence has been obtained concerning the status
2 of Wells Fargo Bank as Trustee of the GSR039 Trust. One of the
3 issues that the Plaintiff-Debtor states he intends to assert
4 through the adversary proceeding is an issue of ownership of the
5 promissory note which is secured by the deed of trust against his
6 property.

7 The court presently has under submission and is issuing a
8 ruling on the Plaintiff-Debtor's motion for issuance of preliminary
9 injunction and the Defendants' motion to dismiss the adversary
10 proceeding. Those proceedings shall not be reopened and the court
11 shall issue its rulings and orders thereon.

12 Federal Rule of Bankruptcy Procedure 5010 cited by the
13 Plaintiff-Debtor is a procedural rule concerning the reopening of
14 a bankruptcy case, not an adversary proceeding. No ruling and
15 order having been issued on the two pending motions, the provisions
16 of Federal Rules of Civil Procedure 60(b) and Federal Rules of
17 Bankruptcy Procedure 9024 do not yet come into play. To the extent
18 that the request is being made for the court to "reopen" the closed
19 evidentiary hearings on the two motions, that request is denied.
20 No basis has been shown in the motion and supporting pleadings for
21 such relief.

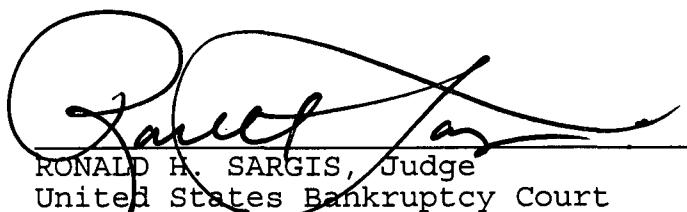
22 A review of the Plaintiff-Debtor's declaration in support of
23 the motion to reopen makes statements concerning evidence regarding
24 the ownership of the note secured by the deed of trust against the
25 Debtor's property, whether disclosures were required to be made by
26 counsel for the Defendants, the Plaintiff-Debtor's investigation of
27 the records in the Tuolumne County Recorder's office, allegations
28 of a "fabricated bogus assignment," and the Plaintiff-Debtor's

1 opinion as to the ultimate ownership issue of the note. The court
2 also notes that in the early stages of this adversary proceeding,
3 no discovery has been conducted and the requested relief is not
4 brought pursuant to a failure of the Defendants to comply with any
5 proper discovery request.

6 The motion to reopen is denied.

7 The court shall issue a separate order consistent with this
8 ruling.

9 Dated: June 6 , 2011

10 
RONALD H. SARGIS, Judge
United States Bankruptcy Court

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This document does not constitute a certificate of service. The parties listed below will be served a separate copy of the attached document(s).

Walter Pineda
22550 Bennett Rd
Sonora, CA 95370

Tracy Talbot
2 Embarcadero Center #1410
San Francisco, CA 94111

Wayne Rash
1231 E Dyer Rd #100
Santa Ana, CA 92705

Gary Farrar
PO Box 576097
Modesto, CA 95357

Office of the U.S. Trustee
Robert T Matsui United States Courthouse
501 I Street , Room 7-500
Sacramento, CA 95814